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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHELLE HINDS, an individual, and TYRONE) Case No.: 4:18-cv-01431-JSW (AGT)
POWELL, an individual,)

Plaintiffs,)

vs.)

FEDEX GROUND PACKAGE SYSTEM, INC.,)
corporation; BAY RIM SERVICES, INC., a)
corporation; and Does 1 through 25, inclusive,)

Defendants.)

**Plaintiffs' Brief re Effect of Jury Verdict on
Joint Employer Issue**

Judge: Honorable Jeffrey S. White
Department: 5

1 Plaintiffs submit this brief in compliance with the Court’s order dated October 6, 2022, asking
2 the parties to brief the issue of “why, if the PAGA claim is to be tried to the Court, the Court should
3 or should not be bound by the jury’s findings on whether FedEx is a joint employer.” (Dkt. 251.)

4 **Procedural Posture.**

5 The Court asks the parties to assume that, contrary to Plaintiffs’ contention, the PAGA claims
6 should be tried by the Court. The Court appears to assume that the individual claims would be tried
7 to a jury first, resulting in a jury finding that FedEx Ground was, or was not, the employer of Bay
8 Rim’s employees. The Court asks for briefing about whether this jury finding would be binding on
9 the Court’s subsequent PAGA decision.
10

11 The answer flows from the application of standard principles of issue preclusion. While
12 technically “issue preclusion” might not be involved because issue preclusion involves the same issue
13 adjudicated in two separate actions, rather than the same issue adjudicated twice in the one action,
14 nevertheless there is a virtually identical preclusion rule resting upon the same principles that applies
15 to two adjudications within a single action. *Gavriiloglou v. Prime Healthcare Management, Inc.*
16 (2022) ___ Cal.App.5th ___, ___, 2022 Cal.App. LEXIS 805 at 7n.3. For convenience, we will refer
17 to this as “issue preclusion.”
18

19 The answer that flows from the application of standard principles of issue preclusion is this:
20 It depends on who wins.
21

22 **A Jury Finding that FedEx Ground Was *Not* the Employer Is *Not* Binding.**

23 Suppose the jury in the individual adjudication finds that FedEx Ground was *not* an employer
24 of Bay Rim’s drivers. According to standard principles of issue preclusion, in the subsequent PAGA
25 adjudication the jury’s finding can only be asserted against a party or one in privity. *Id.*, ___,
26 Cal.App.5th ___, ___, 2022 Cal.App. LEXIS 805 at *7. The State, however, the real party in interest
27 in the PAGA adjudication, is not a party to the action by Hinds and Powell for individual damages for
28

1 labor law violations they suffered. *Id.*, ___, Cal.App.5th ___, ___, 2022 Cal.App. LEXIS 805 at *9;
2 *see also Howitson v. Evans Hotels, LLC* (2022) 81 Cal.App.5th 475, 491 (State was not a party to
3 employee's individual lawsuit). Nor is the State in privity with Hinds and Powell in this individual
4 action. *Gavriiloglou v. Prime Healthcare Management, Inc.* (2022) ___ Cal.App.5th ___, ___, 2022
5 Cal.App. LEXIS 805 at 7n.3; *Howitson v. Evans Hotels, LLC* (2022) 81 Cal.App.5th 475, 491 (State
6 had no interest in employee's individual lawsuit). Thus, in the subsequent PAGA adjudication, the
7 State, the real party in interest in the PAGA suit, is not bound by determinations made in the prior
8 adjudication of the individual claims.

10 Are Hinds and Powell bound? For purposes of issue preclusion, a party who appears in one
11 capacity, whether individual or representative, is not thereby bound by issue preclusion in a
12 subsequent action in which he appears in another capacity. *Gavriiloglou v. Prime Healthcare*
13 *Management, Inc.* (2022) ___ Cal.App.5th ___, ___, 2022 Cal.App. LEXIS 805 at *7. In their
14 individual adjudications, Hinds and Powell are the real parties in interest, and they are litigating their
15 own individual rights to damages. In the PAGA adjudication, the State is the real party in interest;
16 Hinds and Powell are merely representatives litigating the State's right to civil penalties. *Howitson v.*
17 *Evans Hotels*, 81 Cal.App.5th 475, 491-492. Thus, in the PAGA adjudication Hinds and Powell are
18 not bound by the outcome of the individual adjudication.

20 This rule that a judgment against a party in one capacity cannot affect the party when acting in
21 a different capacity has one exception: When a party appearing in two suits in different capacities is
22 litigating the same right. *Gavriiloglou v. Prime Healthcare Management, Inc.* (2022) ___
23 Cal.App.5th ___, ___, 2022 Cal.App. LEXIS 805 at *8. But the primary rights asserted in the
24 individual suit and primary rights asserted in the PAGA suit differ. In the individual suits, the
25 primary rights are based on harms that were suffered by the individuals, and they seek damages to
26 compensate for those harms. *Howitson v. Evans Hotels*, 81 Cal.App.5th 475, 487. In the PAGA suit,
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28

1 the primary rights are based on harms that were suffered by the State and the general public, and the
2 State seeks civil penalties to punish and deter misconduct. *Id.* at 487-488 (“That both the First and
3 Second Lawsuits involved the same or almost the same alleged Labor Code violations does not
4 change our conclusion that the ‘primary rights’ in the two lawsuits are not the same.”). Thus, in the
5 subsequent PAGA adjudication this “litigating the same right” exception does not bind Hinds and
6 Powell to the outcome of their individual suits.

7
8 In sum, a jury finding in the individual adjudication that FedEx Ground is not the employer of
9 Bay Rim’s employees should have no affect on the Court’s subsequent determination of the issue in
10 the PAGA adjudication. The real party in the PAGA suit, the State, cannot be bound by a prior
11 adjudication in which it held no interest, and the individual plaintiffs were suing in different
12 capacities in the two adjudications.

13
14 **A Jury Finding that FedEx Ground *Was* the Employer *Is* Binding.**

15 Suppose the jury in the individual adjudication finds that FedEx Ground *was* an employer of
16 Bay Rim’s drivers. Would this finding bind FedEx Ground because of issue preclusion?

17 Issue preclusion applies “(1) after final adjudication (2) of an identical issue (3) actually
18 litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the
19 first suit or one in privity with that party.” *Grande v. Eisenhower Medical Center* (2022) 13 Cal.5th
20 313, 323 (emphasis omitted).¹ Since, as discussed above, the actual principle we are discussing is not
21 issue preclusion but the very close relative applicable to separate adjudications of an issue within the
22 same lawsuit, the “final adjudication” would be the jury’s determination, in Hinds’ and Powell’s
23 individual adjudications, that FedEx Ground was an employer of Bay Rim’s drivers. This issue
24 would be identical in both the individual and the PAGA adjudications because FedEx Ground’s
25
26

27
28 ¹ The Court should apply the California law of issue preclusion. *NCTH-WA, Inc. v. ZTE Corp.*, 921 F.3d 1175, 1180-1181(9th Cir. 2019).

1 relationship to Bay Rim's does not differ by driver. This issue would have been actually litigated and
2 decided in the individual adjudications. And since FedEx Ground was a party in the individual
3 adjudication, the jury's finding could be asserted against it in the subsequent PAGA adjudication.

4 This is an application of "offensive" issue preclusion, which does not require that the party
5 asserting issue preclusion be a party (or privy) to the prior adjudication. By way of contrast, in claim
6 preclusion, the preclusion applies only if *both* parties (or their privies) were involved in the original
7 litigation. *Grande v. Eisenhower Medical Center*, 13 Cal.5th 313, 323 (mutuality required in claim
8 preclusion). But with issue preclusion, an outside party (*e.g.*, the State) may assert this preclusion
9 against parties (and privies) involved in the original litigation. *Id.* (mutuality not required in issue
10 preclusion).
11

12 **Conclusion.**

13
14 If the jury finds that FedEx Ground is not the employer, issue preclusion does not apply; if the
15 jury finds that FedEx Ground is the employer, issue preclusion does apply.²
16

17 Respectfully submitted,

18 Dated: October 11, 2022

19 **aiman-smith & marcy**

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21 Joseph Clapp, Esq.
22 Attorneys for Plaintiffs
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27 ² The Court also asks whether the Court can or should pose special interrogatories to the jury
28 on the joint employment issue. It is the Plaintiffs' view that that the special verdict form that
they submitted adequately elicits the necessary jury findings.